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ABSTRACT

This study attempted to determine the extent to which school districts had brought their maternity leave policies into compliance with the latest Supreme Court ruling. The study also analyzed the maternity leave requirements of the Equal Employment Opportunities Commission (EEOC), and sought to determine which variables were associated with compliance with the Supreme Court ruling and the EEOC regulations. Interviews and surveys of school district personnel in the nation's 11 largest school districts determined maternity leave policies in effect for the 1974-75 school year. This data indicated that all the school districts complied with those EEOC regulations which were supported by the Supreme Court. The ideal school district, in terms of Total Compliance, was found to be: (1) affiliated with an NEA bargaining agent; (2) of low or medium teacher size; (3) Southern; and (4) with few racial minorities on the school board. (Author/PC)

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CHALLENGING SEX DISCRIMINATION THROUGH THE COURTS: MATERNITY LEAVE POLICIES

by

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When the U.S. Supreme Court struck down the maternity leave policies for teachers in the Cleveland, Ohio and Chesterfield County, Virginia school districts in January 1974, it, in effect, mandated that almost every school district in the country revise its maternity leave regulations. At the time that the Supreme Court issued its ruling, almost every public school district in the country had provisions in its maternity leave policy which violated the Court's decision: policies which the Court described as arbitrary, irrational, unreasonable and in clear violation of the due process clause of the U.S. Constitution.

This study was undertaken to determine the extent to which school districts have brought their maternity leave policies into compliance with the Supreme Court's decision in the fourteen months since the Court's ruling. In addition, the study analyzes the maternity leave requirements of the Equal Employment Opportunities Commission (EEOC) to determine the extent to which school districts are complying with these regulations. This study also seeks to determine which variables are associated with compliance with the Supreme Court ruling and the EEOC regulations.

Development of Issue

The issue of maternity leave rights grew simultaneously with the advent of the women's rights movement. As American

working women became more aware of their status in society, they began questioning the norms and rules which had either a latent or manifest function of restricting their equal employment with men. It was only natural that the majority of professional women in this country, public school teachers, would be among the first to see the inherent inequity of existing maternity leave policies.

However, with individual women's struggles to change maternity leave policies came a deepening resistance to this change from school board members, who are overwhelmingly male. Most American school boards absolutely refused to change their policies, despite charges of discrimination from women teachers.

Why were so many teachers eager to change maternity leave policies, and why were school boards equally adamant in their resistance to change? In the majority of American school districts, written maternity leave policies are unilaterally agreed to by the school board or by the board in negotiation with the local teacher organization. In very few cases is the policy informal and unwritten. Only a small percentage of school districts gave a teacher the right to decide herself when to leave teaching before the birth of her child, and how soon to return afterwards. Almost all school districts set time limits for her.

These time limits varied by school district, but usually school boards required teachers to leave the classroom five or

six months before the birth of the child. Teachers were also required to stay out of teaching at least three months after childbirth.[1]

Many boards actually required pregnant teachers to leave teaching as soon as she knew she was pregnant, and to stay out of teaching until her child was two years old. One example was the New York school district which required that a teacher notify the board as to her pregnancy within ten days of conception.

The most offensive aspect of these policies was that they had no medical basis. Most medical evidence states that pregnant women are more susceptible to injury and absence from work in the first few months than in later months. No medical testimony supporting policies that terminated pregnant teachers in their last months were introduced by schools in the Supreme Court case. It is obvious that past maternity leave policies were based on medical misinformation and myths that were stubbornly clung to by school board members.

These policies were also frequently based on Victorian attitudes toward pregnancy. The case for mandatory time of termination was often determined not by the length of pregnancy but rather by the teacher's appearance. For example, teachers in Tipp City, Ohio were forced to terminate their services five months prior to the expected date of birth or "earlier if the evidence of pregnancy is too pronounced." Similarly, in Danville,

Kentucky teachers had to request leave at the beginning of the fifth month of pregnancy unless "the pregnancy becomes noticeable before then." The Milford, Nebraska maternity leave policy explained its provision by stating that "teaching while in obvious states of pregnancy is not for the best interests of the schools' education program."[2] It is interesting to note that in school districts where pregnant students were allowed to continue in school, pregnant teachers often were not. In fact, Mrs. LaFleur, one of the respondents in the Supreme Court case, had several pregnant students in her class at the time she was pregnant, and was required to take her leave.[3]

The theme that women need to be taken care of and protected during pregnancy runs throughout maternity leave policies. Almost all school districts require women who have had children to bring in a note from their doctor stating that they are physically and emotionally capable of returning to work: this requirement often includes women who bore a child two years previously. Other policies required a teacher to submit evidence that her child was being take care of while she worked. An occasional school board demands that the teacher bring in a note from her husband which states his permission for her to teach before the board will allow her to return to teaching.

These paternalistic attitudes were openly stated by many school systems. For example, one school district in Harrisburg,

Pennsylvania states: "A married woman's first responsibility will naturally and rightfully be to her husband, household, and children. Should a married female employee become pregnant, her resignation would be best for her, her family and the school." The author of the Cleveland maternity leave policy stated in defense of the policy: "I am a strong believer that young children ought to have the mother there . . . it is very important that they be there for the love and tender care of the babies."[4]

One of the strongest inequities in maternity leave policies was that, almost without exception, women were not allowed to use their accumulated paid sick leave days for the time they were absent due to maternity. All other types of medical absences were allowed under paid sick leave policies except for maternity. A woman could use sick leave to have an abortion or a hysterectomy, but not to have a baby.

Even more ludicrous is the policy in effect in a number of school systems which allows a male teacher to use his sick leave when his wife gives birth, while prohibiting female teachers from taking sick leave when they have a child. Apparently, paternity rights are more important than maternity rights.

Financial Hardships to Women Teachers

Maternity leave regulations meant dollars out of a woman teacher's pocket. Not only were women obliged to stop work for

a considerable length of time before and after childbirth, whether they wished to stop working or not, but they had to do this at their own expense. They also were not guaranteed their jobs when they returned to work. Nontenured teachers, who left during pregnancy, had to reapply to the district and were treated as new applicants.

It is obvious, then, that maternity leave policies stopped women's progress on their career ladder. These policies help to restrict a woman's chance for promotion to a supervisory or administrative position. Young women have been assured that they will become pregnant and have to leave teaching, while older teachers who had fewer consecutive work years due to these policies have had less of a chance for promotions because of it.

The Role of Teacher Organizations

Today these policies seem ludicrous and unbelievable: but for many years women teachers accepted them as another restrictive aspect of women's role in society. The belief was that these policies were inevitable and unchangeable: this belief was fostered by local teachers' organizations, which supported these restrictive policies.

Only in the past few years has there been strong response from women teachers against these policies. On the national and state level, both the American Federation of Teachers and the National Education Association have passed policy resolutions

calling for liberalized maternity leave regulations. They have also provided legal and financial assistance to women in litigation against their school boards.

Since seventy percent of American school districts with contracts with a teacher organization have a maternity leave regulation in their contract,[5] maternity leave is one area where decision-making is shared by the teacher organization and the board: it is not a unilateral decision in these districts. But overwhelming, local teacher organizations have agreed to maternity provisions in their contract negotiations that were in direct contrast to their national organization policy. This makes clear the fact that NEA and AFT local affiliates have shown only nominal concern regarding maternity leave policies.

Because local teacher organizations did not use the collective bargaining process to improve maternity leave regulations prior to the Supreme Court ruling, the only alternative for women teachers was to file suit with the local Human Rights Commission or to take their board to court. By 1974, teachers had sued in over twenty states: two of these cases were heard before the Supreme Court in January 1974.

The Supreme Court Ruling

In defending their right to set time limits for when a pregnant teacher must leave and return to the classroom, the two school boards presented arguments in defense of these time

requirements.[6] Some of these arguments were: protection of children from teachers who were incapable of performing their duties, administrative convenience, maintenance of continuity in classroom instruction, and protection of the expectant woman and her unborn child.

The Court did not support the school districts' arguments and held the maternity leave policies to be unconstitutional. In fact, the Court stated that these policies were more likely to prevent continuity in instruction than to support continuity. Not only that, but Justice Powell called the school boards' arguments after-the-fact rationalizations which were developed specifically to meet the legal challenge.

The Court also ruled that the Cleveland provision, requiring a woman to stay out of teaching three months after childbirth, was unconstitutional. It was termed "wholly arbitrary and irrational," and penalized women for having children. However, the Chesterfield County regulation that teachers must wait until the beginning of the next school year to return to work was upheld because it provided for continuity of instruction.

But the Court did not rule on other maternity leave issues: whether maternity leave can be denied to untenured teachers, or whether the board can set a termination date for the last few weeks of pregnancy. Most importantly, the Court did not decide on the issue of whether a teacher on maternity leave should receive sick leave pay or normal benefits during her

maternity leave, although these were issues dealt with by EEOC regulations.

Impact of the Civil Rights Act on Maternity Leave Policies

The Court decision did not touch upon some important policy recommendations of the extension of Title XII of the Civil Rights Act of 1964 which covers educational employees because the Cleveland and Chesterfield County teachers were placed on maternity leave prior to this extension.

In 1972 Title VII, which prohibits job discrimination on the basis of sex as well as other characteristics, was extended by the Equal Employment Act of 1972 to cover public employees. The Equal Employment Opportunities Commission (EEOC), the federal body which administers Title VII, has issued guidelines which mandate that pregnancy be treated exactly the same as other types of temporary disability. Therefore, under EEOC regulations, maternity leave must be viewed as just another reason for regular paid sick leave and not as a special and separate category of leave as it usually has been treated. In addition, school district regulations regarding accrual of seniority, reinstatement, and payment under any health insurance plan, must treat maternity leave the same as any other temporary disability. While EEOC regulations are not binding on court decisions, courts have usually supported these regulations. Therefore, in order to assure the legality of present maternity leave policies, school districts should have policies which conform to both the Supreme Court ruling and the EEOC regulations.

Having a maternity leave policy which does not conform to the EEOC regulations leaves school districts extremely vulnerable to law suits by women teachers, which, if the district loses, will cost the district substantial sums of money. Because of this, it is clearly in the best interest of school districts to have maternity leave policies which conform to both the Supreme Court ruling and EEOC regulations.

Methology

For the purpose of this study, the maternity leave policy in effect for the 1974-75 school year in the eleven largest school districts in the country (those with an enrollment of over 120,000 students) was determined. Interviews with school district personnel and content analyses of written policies were made to determine the policies in New York City, Los Angeles, Chicago, Detroit, Philadelphia, Houston, Miami (Dade County), Baltimore, Dallas, Cleveland, and Washington, D.C. These eleven school districts employ a total of 179,054 school teachers, or approximately eight percent of all the teachers in the nation. Relationship between compliance with EEOC regulations and the following variables was made: compliance with Supreme Court decision; former maternity policies; region of school district; percent of teachers within school district; bargaining agent; method of selection of board members; percent of women on board; occupation of women board members; and race of board members.

Analysis of Data

The response rate for the survey was one hundred percent, with a one hundred percent response rate for each question. (See interview schedule at the end of the paper). Every school district (100%) had a written maternity leave policy.

As was stated earlier, there are five major compliance points within the EEOC regulations. Two of these five points were ruled on and upheld by the U.S. Supreme Court: three have

not yet had a definitive court ruling. However, the absence of a definitive ruling does not necessarily weaken the thrust of EEOC regulations.

The large city school districts were surveyed regarding degree of compliance with the five major EEOC regulations. When they were asked whether or not there exists a policy regarding the time of pregnancy when a teacher must begin maternity leave, and whether or not there exists a policy determining how long a teacher must stay out of the classroom after childbirth, all replied that there was no set policy. Therefore, all school districts (100%) showed total compliance on these two points.

TABLE I

Compliance on Five Issues

Issue	Percent Compliance	Cities Not In Compliance
1. Leave Policy	100%	
2. Return Policy	100%	
3. Sick Leave	82%	Los Angeles; Baltimore
4. Fringe Benefits	64%	L.A.; Balt.; Chic.; Detroit
5. Guaranteed Return to Former Position	64%	L.A.; Balt., Cleveland; N.Y.

N=11

As Table I shows, two school districts (18%) were not in compliance with EEOC regulations regarding the payment of sick leave benefits to those teachers absent due to pregnancy. Four school districts (36%) were in violation of the EEOC regulations regarding both the granting of fringe benefits (health insurance, etc.) and guaranteed return to former position.

It should be noted, however, that of those school districts who denied fringe benefits to teachers on maternity leave, all allowed these teachers to continue their coverage while on maternity leave by paying both their share and the school district's share of the costs of the benefit plan. Also, of those districts which did not guarantee that a teacher on maternity leave be returned to her former position, all of these districts did assure her of a similar position.

Returning to Table I, both school districts which denied sick leave benefits also denied both fringe benefits and guarantee of former position. Fifty percent of those school districts which were not in compliance on the fringe benefits issues were in compliance on guaranteed return to former status, and fifty percent of those districts which were not in compliance on guaranteed return to former position were in compliance on the fringe benefits issue.

Large city school districts have been categorized into three groups, for purposes of cross-tabulations. The first category, as shown in Table II, is comprised of those school districts which complied with all aspects of the EEOC regulation and Supreme Court decision. These school districts are, therefore, in total compliance and represent forty-five percent of the total. Those school districts (36%) who violated only one of the five regulations were deemed as being in substantial compliance. Those districts (18%) which violated three of the

five regulations were considered to be in substantial non-compliance. Note that fifty-five percent of all large city school districts violate at least one aspect of the EEOC regulations.

TABLE II

Type of Compliance by Percentage of School District

Type of Compliance	Percentage
Total Compliance	45%
Substantial Compliance	37%
Substantial Non-Compliance	18%

It should be pointed out that of the five major compliance issues stemming from EEOC regulations, the two which have been supported by the Supreme Court are the only regulations on which there has been one hundred percent compliance within large city schools. It is obvious that support of an EEOC regulation by a Supreme Court decision is positively related to compliance.

In order to assume a relationship between current maternity leave policies and the effect of EEOC regulations, those maternity leave policies in effect previous to EEOC rulings should be examined.[7] Only one of the eleven large city school districts had, before the EEOC regulations went into effect, what we would term Total Compliance with these regulations policies. One other district (9%) would be grouped into the Substantial Compliance category, based on its old policy, while the remaining eighty-two percent of the former policies of the remaining school districts would have to be grouped into the Substantial Non-Compliance category. There is, therefore, substantial evidence

that without EEOC regulations and the Supreme Court ruling, these restrictive maternity leave policies probably would not have been changed.

The variable region of country was examined in relationship to existing maternity leave policies. Grouping the eleven cities into the regions of West, Midwest, Mid-Atlantic, and South, Table III shows that the cities showing total compliance were generally southern cities.

TABLE III

Region by Compliance

	West	Mid-Atlantic	Midwest	South
Substantial Compliance	100%	25%	0	0
Substantial Non-Compliance	0	25%	100%	0
Total Compliance	0	50%	0	100%
	N=1	N=4	N=3	N=3

The variable number of teachers in a school district[8] was analyzed in terms of maternity leave policy compliance. The number of teachers in a large city school district were grouped into three categories: small (under 9,999 teachers); medium representation (under 19,999 teachers); and large (over 20,000 teachers). Table IV shows that school districts with small and medium numbers of teachers are substantially more likely to be found in total compliance than are school districts with a large number of teachers. In fact, of the three largest American school systems (New York City, Los Angeles, and Chicago), which represent 62% of the teachers in this total sample, none are in total compliance with EEOC regulations.

TABLE IV

Number of Teachers by Compliance

	Small	Medium	Large
Total Compliance	60%	67%	33%
Substantial Compliance	20%	33%	67%
Substantial Non-Compliance	20%	0	0
	N=5	N=3	N=3

Table V displays type of teacher bargaining agent (AFT, NEA, and Other) by type of compliance. This shows that total compliance tends to be found in school districts with NEA as the bargaining agent.

TABLE V

Bargaining Agent by Compliance

	NEA	AFT	Other
Total Compliance	67%	33%	0
Substantial Compliance	0	67%	0
Substantial Non-Compliance	33%	0	100%
	N=3	N=7	N=1

The next four variables affecting compliance all refer to characteristics of school boards: selection of members;[9] number of women members;[10] occupation of women members;[11] and race of members.[12] Table VI shows method of selection of school board members (appointed or elected) by compliance. Table VII indicates that there does not appear to be any definite relationship between method of selection of board member and extent of compliance.

TABLE VI

Method of Selection by Compliance

	Appointed	Elected
Total Compliance	25%	57%
Substantial Compliance	50%	29%
Substantial Non-Compliance	25%	14%
	N=4	N=7

In Table VII, the percent of women serving on a school board was grouped into three categories: low (between ten and nineteen percent); medium (twenty to thirty-nine percent); and high (forty to forty-six percent). There does not seem to be any definite relationship between percent of women on board and type of compliance.

TABLE VII

Percent of Women on Board by Compliance

	Low	Medium	High
Total Compliance	33%	50%	50%
Substantial Compliance	33%	25%	50%
Substantial Non-Compliance	33%	25%	0
	N=3	N=4	N=4

Occupation of the women school board members was analyzed (housewife or non-housewife) in order to see if any relation occurred between occupation and type of compliance. The school boards where the women members were housewives in less than fifty percent of the cases were placed in the category "Low," and those boards with women members who were housewives in more than fifty percent of the cases were placed in the "High" category.

As Table VIII indicates, there was no relationship between percent housewife of women board members and type of compliance. It is important to note, however, that seventy-three percent of the large city school districts sampled had women board members whose occupation was housewife over fifty percent of the time.

TABLE VIII

Occupation of Women Members by Compliance

	Low	High
Total Compliance	33%	13%
Substantial Compliance	33%	37%
Substantial Non-Compliance	33%	50%
	N=3	N=8

Racial representation on school boards of minorities was grouped into two categories: Low and Medium Representation (between fourteen and thirty-three percent racial minorities) and High Representation (between thirty-six and seventy-three percent racial minorities). Table IX shows that a high percent of racial minority board members is less likely to result in total compliance with maternity leave regulations. (It is

interesting to note that racial minorities, whatever their sex, are as well-represented on school boards in this sample as are women, whatever their races. The fairly high representation of racial minorities is probably a function of the fact that this sample is of large city school districts, while the fairly low representation of women on large city school districts is typical of most school boards).[13]

TABLE IX

Racial Minority Board Representation by Compliance

	Low & Medium	High
Total Compliance	57%	25%
Substantial Compliance	29%	50%
Substantial Non-Compliance	14%	25%
	N=7	N=4

To summarize, all school districts complied with those EEOC regulations which were supported by the Supreme Court. However, fifty-five percent of large city school districts violated at least one EEOC regulation. Those variables which seem positively related to Total Compliance are: a Supreme Court decision in support of regulations; South as region of school district; low and medium representation of teacher size for school districts; and affiliation with NEA as the bargaining

agent for teachers. Those variables which seem to be neither positively nor negatively related to Total Compliance are: method of selection of board members; percent women on board; and percent occupation of women board members. (Note that three of four school board variables are not related to Total Compliance.) A variable negatively related to Total Compliance was high percent of racial minorities as school board members. The ideal school district, in terms of Total Compliance, would be: affiliated with an NEA bargaining agent; of low or medium teacher size; Southern; and with few racial minorities on the school board. In summary, the typical school district which is in compliance with Supreme Court and EEDC rulings does not have the characteristics one would expect.

Conclusion

Why have local school boards shown no resistance to complying with provisions of the Supreme Court ruling, while a significant number of boards flagrantly violate EEOC regulations? One reason is probably that of legitimacy. The stature of a Supreme Court ruling is considerably higher than that of an EEOC regulation. Another contribuing factor is that some provisions in EEOC maternity leave regulations, such as sick leave, have not been subject to a definitive court ruling and are therefore not regarded by many people as legally binding.

Probably an even stronger cause of noncompliance with EEOC regulations is that putting these regulations into practice would be very expensive for school districts. Compliance with the Supreme Court ruling, that is not having mandatory cut-off dates for employment, do not require a substantial outlay of funds. But giving sick leave pay to pregnant teachers, and extending their benefits through the time they are absent, means a policy change which results in spending extra money: not a popular thought to school board members. Both of these factors, the legitimacy of a Supreme Court decision as compared to the lack of legitimacy of an EEOC regulation, and financial cost, strongly contribute to the tendency of school districts to comply with the Supreme Court decision on maternity leave and not the EEOC regulations.

Of course, if the school boards which do not comply with EEOC regulations are sued and lose their case, they then risk losing a tremendous amount of money. In fact, recently a U.S. district court ruled that 125 teachers in Oklahoma City are eligible for back pay and sick leave due to illegal maternity leave requirements.[14] A Richmond, Virginia Federal judge also ordered retroactive back pay for these reasons.[15] These are the first class action suits regarding maternity leave.

If school boards continue to lose class action suits, the result is more costly than if they had voluntarily paid sick leave benefits, because districts then would be required to financially reimburse those teachers who were forced out of teaching as well as having paid other teachers to substitute for them. But school boards may still prefer to be forced to change their sick leave policies, rather than to do so voluntarily. Many school boards would rather lose a case, and then be legally required to change their policies, than to voluntarily increase the district budget, and risk voter disapproval.

However, impending Title IX regulations will make it extremely difficult for school boards to resist change, by mandating that maternity leave and temporary disability provisions be identical. In addition, implementation and enforcement of Title IX by HEW will remove the burden of initiating legal action from individual women teachers.

FOOTNOTES

1. "Selected Maternity Leave Provisions Contained in Comprehensive Agreements," Negotiation Research Digest 4 (September 1970): 24-27.

2. Cited in National Education Association and The Women's Equity Action League Educational and Legal Defense Fund, Amicus Curiae Brief on Cleveland Board of Education v. Jo Carol LaFleur and Susan Cohen v. Chesterfield County School Board, U.S. Supreme Court, October Term, 1972.

3. Cited in National Education Association, Amicus Curiae Brief on Jo Carol LaFleur and Ann Elizabeth Nelson v. Cleveland Board of Education, U.S. Court of Appeals For The Sixth Circuit, 1971.

4. Cited in NEA and WEAL, Brief, U.S. Supreme Court.

5. "The Effect of New Maternity Leave Code in Negotiation," Negotiation Research Digest 6 (September 1972): 23-26.

6. The Cleveland policy required the woman teacher to go on leave five months before the birth of her child and the Chesterfield County policy required the teacher to go on leave no later than the fifth month of pregnancy.

7. Information regarding former maternity leave policies was based on: Classroom Teachers in Large School Systems (Washington, D.C.: Educational Research Service, 1966).

8. U.S. Department of Health, Education, and Welfare, Office of Education, Statistics of Public Elementary and Secondary Day Schools, Fall 1973 (Washington, D.C.: 1974), p. 15.

9. National School Boards Association, Survey of Public Education in the Nation's Big City School Districts (Evanston, Ill.: 1972), pp. 26-31.

10. Ibid., pp. 40-48.

11. Ibid.

12. Ibid.

13. Andrew Fishel and Janice Pottker, "School Boards and Sex Bias in American Education," Contemporary Education (Winter 1974).

14. Cited in The Spokeswoman, March 15, 1975, p. 7.

15. Kenneth Bredemeir, "Teacher Pregnancy Pay Is Ordered in Virginia," Washington Post, March 7, 1975.